C 1

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 28 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as a deacon at a weekly salary of $250.

The director denied the petition, finding that the beneficiary's volunteer work with the petitioner was insufficient to satisfy the requirement that he had been continuously carrying on a religious occupation or vocation for at least the two years preceding the filing of the petition. The director further found that the petitioner failed to establish that it had the ability to pay the proffered wage.

On appeal, counsel for the petitioner submits a brief asserting that the director erred in denying the petition and in his interpretation of the law.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional

> work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a 49-year old native and citizen of Jamaica. The petitioner stated that it has more than 300 members in its congregation, and indicated that it has only one paid employee. It submitted evidence that it has the appropriate tax exempt recognition. The beneficiary entered the United States as a B-1 nonimmigrant visitor for business on March 9, 1997 and departed on March 12, 1997, then re-entered as a B-2 nonimmigrant visitor for pleasure on November 19, 1998.

At issue in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation or vocation for the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on April 26, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation or vocation since at least April 26, 1999.

In a letter dated March 28, 2001, the petitioner indicated that the beneficiary would be paid a salary if the petition were approved and stated:

> In February 1999, [the beneficiary] was ordained as a Deacon to assist the Pastor in serving Holy Communion to the elderly congregation, most of all those who were sick and shut-in. This role was expanded when the church added the outreach feeding program and Senior Citizen Center . . . .

In response to the director's request for additional evidence, counsel for the petitioner argued that the Bureau's interpretation of the law to require that the prior experience have been salaried, did not comport with the Act.

In his decision, the director reiterated that because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, and this type of proposed position is a salaried position, the Bureau interprets the regulations to require that the prior experience have been salaried as well.

In the absence of W-2's and certified income tax returns, the

petitioner failed to establish that it had employed the beneficiary for the requisite two years.

The director denied the petition, in part, finding that the petitioner failed to provide sufficient evidence of its ability to pay the beneficiary. On appeal, counsel for the petitioner asserts that the petitioner had submitted a copy of its corporate tax return for 2001 that was sufficient evidence of its ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

Although the petitioner has furnished the Bureau with the church's 2001 federal tax return, the petitioner has failed to establish that it has the ability to pay the proffered wage. The petitioner indicated that it was having financial difficulties. In a letter to the Bureau, the petitioner wrote:

> We have not kept the best records on how many [immigrant visa] petitions we have filed over the years; therefore, we cannot provide a definite figure. However, we currently have at least 7 persons who were sponsored. In addition, of the petitions recently filed under the 245(i) extension, we intend to withdraw at least a half of these petitions, because of the devastating effect of the September 11 events. We have had to face changed economic circumstances, and have close[d] some of the church's operations.

On appeal, counsel for the petitioner asserts that the petitioner seeks to retain the beneficiary in a vocation rather than an occupation. The petitioner failed to establish that the position of deacon meets the regulatory definition of a religious vocation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

> *Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

There is no evidence on the record to establish that the position of deacon in the instant case meets the above definition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.